OREGON PORTLAND CEMENT CO.
(ON JUDICIAL REMAND)

IBLA 81-564, 66 IBLA 204 (1982) Decided December 21, 1984

Judicial remand of prior Board decision declaring various mining claims abandoned and void. AA 17423 through AA 17462.

Prior decision vacated, BLM decision reversed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Rules of Practice: Generally

   Where a decision of the Board affirming a determination that certain mining claims were abandoned and void is reversed on appeal and the case is remanded to the Board, the decision of the Court constitutes the law of the case and the Board will vacate its prior decision and reinstate the mining claims.

2. Rules of Practice: Generally

   The Board may decline to follow a decision of a Federal court in other cases where the effect of the decision could be extremely disruptive of existing Departmental policies and programs and where, in addition, a reasonable prospect exists that other Federal courts might arrive at a differing conclusion.

   Oregon Portland Cement Co., 66 IBLA 204 (1982), vacated.

APPEARANCES: Frank E. Nash, Esq., and Richard A. Canady, Esq., Portland, Oregon, for appellant Oregon Portland Cement Co.; Richard F. Allan, Esq., Washington, D.C., for Intervenor Sealaska Corporation; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

By decision dated March 20, 1981, the Alaska State Office, Bureau of Land Management (BLM), declared 40 placer mining claims owned by Oregon Portland Cement Company 1/ abandoned and void for failure to file evidence of

1/ Since the Board's original decision Oregon Portland Cement Company has changed it name to Ash Grove Cement West, Inc. However, in light of the

assessment work or a notice of intention to hold the claims within calendar year 1979, in violation of section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA). See 43 U.S.C. § 1744(a) (1982).

The claims in question had been located in 1965 and were duly recorded with BLM pursuant to section 314(b) of FLPMA, 43 U.S.C. § 1744(b)(1982), on June 19, 1978. On November 22, 1978, appellant filed affidavits of performance of assessment work with BLM for the assessment years ending September 1, 1978, and September 1, 1979. No filing was made within calendar year 1979.

In its initial determination, the State Office relied upon this Board's decision in James V. Joyce, 42 IBLA 383 (1979), wherein we had held that 43 CFR 3833.2-1(a) required the commencement of annual filings under section 314(a) in the calendar year following the calendar year of recording. Since appellant had made no filing in calendar year 1979, the State Office held the claims abandoned and void pursuant to 43 U.S.C. § 1744(c). Appellant timely appealed this decision to the Board.

In our decision, reported as Oregon Portland Cement Co., 66 IBLA 204 (1982), we affirmed the decision of the State Office. Our action was occasioned by two separate holdings. First, we held that, consistent with our prior decision in Harvey A. Clifton, 60 IBLA 29 (1981), the requirement to make annual filings was triggered by the initial filing of the evidence of assessment. 2/ Thus, we agreed that appellant was obligated to make a filing under section 314(a) within calendar year 1979.

Our second holding related to appellant's contention that its filing on November 22, 1978, of affidavits of performance of assessment work for the assessment year ending on September 1, 1979, should be held to meet its requirements for filing within the 1979 calendar year. In rejecting this argument we reiterated our holding in James V. Joyce (On Reconsideration), 56 IBLA 327 (1981), that the legislative history of section 314 of FLPMA, supra, indicated that the filing of proofs of labor were to be made on an annual basis and, hence, must be made within each calendar year. Thus, since we held first, that the obligation to make annual filings was triggered by the filing in November of 1978 of the initial proof of labor, and second, that such filings could only be made within each calendar year, we affirmed the finding that the claims were abandoned and void.

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fact that all prior decisions utilized the Oregon Portland Cement Company name, we will continue to refer to appellant by it throughout this decision.

2/ In this regard, our decision differed from that of the State Office in that BLM had held that the requirement of annual filing was initiated by recordation of the claim as stated by 43 CFR 3833.1-2(a) (1982), whereas we had held it was triggered by the initial filing of the assessment work. Practically, however, since both recordation and the initial filing of assessment work proof had occurred within calendar year 1978, this distinction did not alter the result.

An appeal was duly taken to the United States District Court for the District of Alaska. By decision styled Oregon Portland Cement Co. v. U.S. Department of the Interior, 590 F. Supp. 52 (1984), the District Court reversed the Board's determination. First, citing our decision in Harvey A. Clifton, supra, the Court noted the distinction which the Board had drawn between the recordation of a copy of the notice of location and the first filing of the assessment work. Thus, the Board in Clifton had noted that, though the regulations imposed the necessity of continuing annual filings each year after recordation, the statute, by its terms, necessitated annual filings only after the first filing of a proof of labor or notice of intention to hold. Thus, to the extent that the regulation might impose obligations greater than those implemented by the statute, the Board had held the conclusive presumption of abandonment could only arise upon a failure to fulfill a statutory requirement. The Court, however, rejected both the regulatory standard and the Board's Clifton approach. Instead, the Court determined that the statutory language which required the holder of a pre-FLPMA claim to file "within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter" evidence of assessment work or a notice of intent to hold the mining claim, was correctly interpreted as requiring one filing prior to October 21, 1979, and, only thereafter was a claimant required to make annual filings. 590 F. Supp. at 57-59.

The Court also examined the second prong of the Board's holding, namely, that the statute required the filing of the annual proofs of labor within each calendar year. While the Court recognized that the statute was amenable of the interpretation given it by BLM, it held that "no reasonable administrative purpose is furthered by BLM's interpretation." The Court characterized the decision as "inherently unreasonable." Id. at 61.

Pursuant to its rationale, the Court thereupon held that the Board's decision in Oregon Portland Cement Co., supra, was reversed and the case was remanded with instructions that "IBLA take such further actions as are required by this opinion." Id.

No appeal was taken from the Court's ruling by the United States. In light of the Court's remand order, however, various recommendations were filed with this Board pursuant to 43 CFR 4.29. On July 2, 1984, counsel for BLM filed the State Office's recommendations. First, the Board was asked to issue an order reversing BLM's former decision declaring the claims abandoned and void. Second, counsel advised the Board that "the construction of the Court that the obligation to make annual filings did not commence until after the initial three-year recordation period ending October 21, 1979, is accepted by the BLM." Counsel sought an order by the Board to implement the Court's interpretation. Third, however, counsel advised the Board that BLM did not accede to the Court's interpretation permitting a pre-calendar year filing and argued that the Court did not specifically strike the relevant regulations and a ruling on this point was unnecessary to a resolution of the specific case since appellant's filings "were found to be otherwise sufficient and its mining claims valid."

On July 5, 1984, counsel for Sealaska Corporation (Sealaska) filed its response to BLM's report on remand. This response focused on the third

aspect of the BLM recommendations relating to the question of the permissibility of pre-calendar year filings of proofs of labor. Sealaska took no position on the "implementability" of that part of the Court's decision but took strong objection to the suggestion of counsel for BLM that the mining claims had been found to be "valid," noting that the Court merely determined compliance with section 314 of FLPMA and did not purport to decide whether the claims had been properly located and maintained under the general mining laws.

On July 17, 1984, counsel for appellant filed its remand recommendations. Appellant sought an order reversing the decision of BLM declaring the claims abandoned and void. Appellant also requested that the Board issue an order "restraining BLM from future declarations that [appellant's] mining claims are abandoned and void by reason of [the] filing of an affidavit of annual assessment work on or after September 1 but before January 1 of the year to which said affidavit relates."

[1] Initially, we note that the Board is clearly compelled by the decision of the District Court to vacate our prior decision and reverse the determination of the State Office that the instant claims were properly deemed abandoned and void for failure to timely file evidence of assessment work. It is equally clear, however, as counsel for Sealaska argues, that nothing in either the Department or Court decision examined the central validity of those claims. Indeed, to the extent such an examination would disclose questions of fact relating to the claims' validity, it would be necessary for the Department to initiate a contest of those claims. See United States Steel Corp., 52 IBLA 319 (1981); United States v. O'Leary, 63 I.D. 341 (1956). Thus, while we hereby vacate our decision, reported at 66 IBLA 204, and reverse the March 20, 1981, decision of the Alaska State Office, such action should not be construed as establishing, ipso facto, the validity of each individual claim. The Board expresses no opinion, one way or the other, on this question.

It remains, however, to determine what additional rulings are necessitated by the Court's decision in Oregon Portland Cement Co. v. U.S. Department of the Interior, supra. As noted earlier, the office of the Regional Solicitor suggests that this Board should declare that the obligation to make annual filings did not commence until after the initial 3-year recordation period had run. In other words, an initial filing must have been made on or before October 21, 1979, and within each calendar year thereafter, commencing with calendar year 1980. 3/ Appellant, in addition to the declaration sought by BLM, seeks an additional ruling that evidence of performance of annual assessment work relating to a specific assessment year can be filed anytime within the assessment year and be credited to the calendar year during which the assessment year terminates. In essence, this would allow pre-calendar year filing of assessment work. We decline to issue either requested ruling.

3/ This filing would be required on or before Dec. 30 of each calendar year in light of the statutory requirement that the filing be made prior to Dec. 31.

This Board has, in the past, expressly declined to follow isolated decisions of Federal courts even while recognizing that such a decision is the law of the case. See, e.g., Gretchen Capital, Ltd., 37 IBLA 392 (1978). Even in situations in which the Board has reversed itself following an adverse Federal court decision, the Board has occasionally noted that it was not required to so act. See Sky Pilots of Alaska, 40 IBLA 355 (1979).

The Board has declined to follow Federal court decisions primarily in those situations where the effect of the decision could be extremely disruptive to existing Departmental policies and programs and where, in addition, a reasonable prospect exists that other Federal courts might arrive at a differing conclusion. In our view, both conditions obtain.

First, BLM and this Board have adjudicated the status of literally tens of thousands of mining claims under section 314 of FLPMA. A number of these cases have involved the failure to make subsequent annual filing on a pre-FLPMA claim after an initial filing. Admittedly, the specific question adjudicated by the Court relates solely to past activities. But numerous third parties have, in reliance on these determinations, located new claims. Moreover, it is likely that nonmineral acquisitions of lands embraced by these claims have also been allowed by BLM as a result of prior Board decisions. A general repudiation of the basis on which the Board acted could only serve to unsettle numerous titles and generate considerable litigation. 4/

Even more disruptive would be the abandonment of the principle enunciated in James V. Joyce (On Reconsideration), supra, relating to early filings of assessment work. The Court's finding that early filing of assessment work was permissible is, itself, premised on an implicit finding that the filings required in any calendar year are related to a specific assessment year, i.e., the assessment year which ends on September 1 within the calendar year. This holding, however, is also in conflict with other Board decisions. See, e.g., Perry L. Johnson, 57 IBLA 20 (1981); Harry J. Pike, 57 IBLA 15 (1981). These Board decisions had reversed findings of BLM state offices that claims were abandoned and void because evidence of the wrong assessment year had been filed in a specific calendar year. The Board held that since there was no statutory requirement that the annual filings relate to specific assessment years, the terms of the statute were met where a claimant made any filing of assessment work. Acceptance of the Court's pre-calendar year filing interpretation would necessitate a reversal of these cases and might well serve to invalidate the very claims which the Board had already determined were not abandoned and void. 5/

4/ Indeed, unless it were intended that a Board reversal on this point have the effect of resuscitating such claims there would be no purpose in having the Board address this issue. Since this matter involves only filings made between 1976 to 1979, it could have no prospective effect. Thus, a Board decision could affect only either past actions or nothing at all.

5/ Indeed, the logic of the Court's reasoning could well result in the anomalous result that a filing within one calendar year would be credited to the next calendar year, even though the mining claimant had intended it to meet the initial calendar year's requirement. Thus, the filing of a copy

Beyond all this, we are sure all parties are aware of the fact that the constitutionality of the entire recordation statute is presently pending before the Supreme Court in United States v. Locke, No. 83-1394, prob. juris. noted, 104 S. Ct. 2677 (1984). It is likely that any decision of the Court could have considerable impact on the issues involved in this case. Precipitous action by the Board would thus seem particularly unwise.

Insofar as appellant's claims are concerned, we note that appellant has filed a patent application and a request for mineral survey. Doubtless, a final certificate has already issued or will soon issue in short order. Upon receipt of final certificate, all necessity of making annual filings terminates. See 43 CFR 3833.2-4. Thus, insofar as the instant claims are concerned, appellant has no cause for complaint as to the failure of the Board to accede to its requests or those of BLM relating to aspects of the District Court's decision beyond the reinstatement of its claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's decision styled Oregon Portland Cement Co., 66 IBLA 204 (1982), is vacated and the decision of the Alaska State Office declaring the 40 claims abandoned and void is reversed and the case files are remanded for further action pursuant to the patent application.

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James L. Burski
Administrative Judge

We concur:

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C. Randall Grant, Jr.
Administrative Judge

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Edward W. Stuebing
Administrative Judge

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of assessment work performed on Sept. 10, 1984, would be credited to the 1985 calendar year, regardless of when filed and regardless of the intent of the mineral claimant in making the filing.